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Attorney for Debtors

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:

NIMBUS BREWING COMPANY, LLC,

No. 4:12-bk-08122-EWH

Chapter 11

NOTICE OF SUBMISSION OF  
DEBTOR'S FIRST DISCLOSURE  
STATEMENT FOR ITS  
FIRST PLAN OF REORGANIZATION  
DATED December 18, 2012

Nimbus Brewing Company, LLC, (hereinafter "the Debtor"), by and through its counsel undersigned, submits this proposed First Disclosure Statement attached hereto and by reference incorporated herein (hereinafter "the Disclosure Statement") in connection with the "Debtor's First Plan of Reorganization" attached as Exhibit "A" hereto December 18, 2012 (hereinafter "the Plan"). The Disclosure Statement is submitted in compliance with 11 U.S.C. Section 1125 and Bankruptcy Rule 3017. It has not been approved by the Bankruptcy Court and is filed solely to enable the Court and parties in interest to evaluate the adequacy of the information contained herein as required of the Bankruptcy Code. Moreover, the Disclosure Statement refers to information contained herein as required by the Bankruptcy Code. The Disclosure Statement refers to information and facts that the Debtor anticipates will be accurate or will occur on or prior to the date of the hearing to consider the Disclosure Statement. Therefore, certain information and facts contained in the Disclosure Statement may not be completely accurate as of the date hereof.

The Debtor believes that a form of Disclosure Statement in substantially the form as that which

1 is attached hereto contains information of a kind, and in sufficient detail, as far as is reasonably practical  
2 in light of the nature and history of the Debtor, that would enable a reasonable investor, typical of the  
3 holders of claims and interests in each class of claims and interest in the Plan, to make an informed  
4 judgment about the Plan. Nevertheless, all readers are cautioned that the Debtor may file further  
5 modifications of the Plan and of the Disclosure Statement prior to the hearing to consider the Disclosure  
6 Statement.

7  
8 *THE FILING AND ANY DISSEMINATION OF THE DISCLOSURE STATEMENT*  
9 *IS NOT A SOLICITATION OF VOTES ACCEPTING OR REJECTING*  
10 *THE PLAN DESCRIBED THEREIN.*

11 DATED: December 18, 2012

12 LAW OFFICES OF  
13 *ERIC SLOCUM SPARKS, P.C.*

14 /s/ Sparks #11726  
15 Eric Slocum Sparks  
16 Attorney for Debtor  
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FOR  
DISCLOSURE STATEMENT DATED  
December 18, 2012

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## LIST OF EXHIBITS

EXHIBIT A	First Plan of Reorganization Dated December 18, 2012 and filed as a separate document
EXHIBIT B	Ballot
EXHIBIT C	Liquidation Analysis
EXHIBIT D	Anticipated Income and Expense/Sources and Uses of Cash

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Attorney for Debtor

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	
	)	
NIMBUS BREWING COMPANY, LLC,	)	No. 4:12-bk-08122-EWH
	)	
Debtor.	)	Chapter 11
	)	
	)	DEBTOR'S FIRST DISCLOSURE
	)	STATEMENT DATED December 18, 2012
	)	FOR ITS FIRST PLAN OF
	)	REORGANIZATION
	)	DATED December 18, 2012

Nimbus Crewing Company, LLC, (hereinafter "the Debtor"), through its undersigned attorney, hereby submits its First Disclosure Statement dated December 18, 2012 for its First Plan of Reorganization dated December 18, 2012.

***SECTION I***

*Introduction*

1.1. Purpose of this Disclosure Statement: the Debtor commenced reorganization proceedings with the filing of a Voluntary Petition on April 17, 2012 under Chapter 11 of the United States Bankruptcy Code, as amended (the "Bankruptcy Code").

A DISCLOSURE STATEMENT FOR THE PLAN OF REORGANIZATION FOR THE DEBTOR WAS FILED BY THE DEBTOR, WHICH DESCRIBES THE TERMS AND PROVISIONS OF THE PLAN OF REORGANIZATION OF THE DEBTOR DATED December 18, 2012.

[After notice and hearing, the Disclosure Statement was approved by the Bankruptcy Court as containing adequate information and sufficient detail to enable the holders of claims against or interest

1 in the debtor to make an informed judgment about the merits of approving the Plan.]

2 The purpose of this Disclosure Statement is to provide holders of claims against or interest in  
3 the Debtor with sufficient information about the Debtor and the Plan to enable holders of claims against  
4 or interest in the Debtor to make an informed judgment on the merits of the Plan and a decision whether  
5 to approve or reject the Plan.

6 Certain materials contained in this Disclosure Statement are taken directly from other readily  
7 accessible instruments or are digests of other instruments. While the Debtor has made every effort to  
8 retain the meaning of such other instruments or the portions transposed, you are urged that any reliance  
9 on the contents of such other instruments should be predicated on a thorough review of the instruments  
10 themselves.

11 THE PLAN ACCOMPANIES THIS DISCLOSURE STATEMENT AS “**EXHIBIT A**”. THE  
12 DEFINITIONS CONTAINED IN THE PLAN APPLY TO THIS DISCLOSURE STATEMENT AND  
13 EACH RECIPIENT THEREOF IS URGED TO REVIEW THE PROVISIONS OF THE PLAN FULLY  
14 PRIOR TO REVIEWING THIS STATEMENT.

15 The Debtor believes the contents of this Disclosure Statement satisfies the requirements adopted  
16 by this Court *In re A.C. Williams Co.*, 25 B.R. 173 (Bankr N.D. Ohio, 1982), *In re Cardinal Congregate*  
17 *I*, 121 B.R. 760 (Bankr S.D. Ohio, 1982). Those elements are as follows:

- 18 1. The circumstances that gave rise to the filing of the bankruptcy petition;
- 19 2. A complete description of the available assets and their value;
- 20 3. The anticipated future of the Debtor;
- 21 4. The source of the information provided in the Disclosure Statement;
- 22 5. A disclaimer, which typically indicates that no statements or information concerning the  
23 debtor or its assets or securities are authorized, other than those set for the in the disclosure statement;
- 24 6. The condition and performance of the debtor while in Chapter 11;
- 25 7. Information regarding claims against the estate;
- 26 8. A liquidation analysis setting forth the estimated return that creditors would receive under  
27 Chapter 7;
- 28 9. The accounting and valuation methods used to produce the financial information in the

1 disclosure statement;

2 10. Information regarding the future management of the debtor, including the amount of  
3 compensation to be paid to any insiders, directors, and/or officers of the debtor;

4 11. A summary of the plan of reorganization;

5 12. An estimate of all administrative expenses, including attorneys fees and accountant's fees;

6 13. The collectibility of any accounts receivable;

7 14. Any financial information, valuations or pro forma projections that would be relevant to  
8 creditors' determinations of whether to accept or reject the plan;

9 15. Information relevant to the risks being taken by the creditors and interest holders;

10 16. The actual or projected value that can be obtained from avoidable transfers;

11 17. The existence, likelihood and possible success of non-bankruptcy litigation;

12 18. The tax consequences of the plan; and

13 19. The relationship of the debtor with affiliates.

14 1.2 Confirmation Hearing and Voting Instructions: The Bankruptcy Court will set/has  
15 set \_\_\_\_\_, 2013, at \_\_\_\_\_ .m. for a hearing on the confirmation of the  
16 Plan. Claimants and interest holders may vote on the Plan by filling out and mailing the accompanying  
17 Ballot for Accepting or Rejecting the Plan to:

18  
19 Clerk of the United States Bankruptcy Court  
20 38 South Scott Avenue  
Tucson, Arizona 85701

21 with a copy to:

22 Eric Slocum Sparks, Esq.  
23 ERIC SLOCUM SPARKS, P.C.  
110 South Church Avenue, #2270  
Tucson, Arizona 85701.

24  
25 The Bankruptcy Court may confirm only one plan in this case. The plan confirmed in the  
26 Bankruptcy Court must meet the requirements contained in the Bankruptcy Code.

27 Only the Debtor or the Debtor's representatives may solicit your vote. The cost of any  
28 solicitation by the Debtor will be borne by the Debtor. No other additional compensation shall be



1 received by any party for any solicitation other than as disclosed to the Bankruptcy Court.

2 1.3 Voting. If you are in one of the classes of creditors or investors whose interests  
3 are affected by the Plan (see “Summary of the Plan” below), it is important that you vote. If you fail to  
4 do so, your rights may be jeopardized.

5 To vote to accept or reject the Plan, creditors and investors of the Reorganized Debtor in any of  
6 the impaired classes (see the “Summary of the Plan” contained herein and the copy of the Plan attached  
7 hereto) should indicated their acceptance or rejection on the appropriate Ballot. A sample ballot is  
8 attached as **Exhibit “B”**. Any creditors or investors holding claims in more than on impaired class must  
9 file one Ballot for each such class. Additional Ballots may be obtained by proper written request to:

10 Eric Slocum Sparks, Esq.  
11 ERIC SLOCUM SPARKS, P.C.  
12 110 South Church Avenue, #2270  
13 Tucson, Arizona 85701  
14 (520) 623-8330  
15 Fax: (520) 623-9157  
16 email: [eric@ericslocumsparkspc.com](mailto:eric@ericslocumsparkspc.com)

17 attorney for the Debtor.

18 You are, therefore, urged to fill in, date, sign and promptly mail the enclosed Ballot furnished  
19 to you. PLEASE BE SURE TO PROPERLY COMPLETE THE FORM AND LEGIBLY IDENTIFY  
20 THE NAME OF THE CLAIMANT OR INTEREST HOLDER.

21 EXECUTED BALLOTS MUST BE RECEIVED ON OR BEFORE THE RETURN DATE SET  
22 FORTH IN THE BALLOT.

23 SINCE MAIL DELAYS MAY OCCUR, IT IS IMPORTANT THAT THE BALLOT OR  
24 BALLOTS BE MAILED OR DELIVERED WELL IN ADVANCE OF THE DATE SPECIFIED. ANY  
25 BALLOTS RECEIVED AFTER THAT DATE MAY NOT BE INCLUDED IN ANY CALCULATION  
26 TO DETERMINE WHETHER THE CREDITORS AND INTEREST HOLDERS HAVE VOTED TO  
27 ACCEPT OR REJECT THE PLAN.

28 THIS IS A SOLICITATION BY THE DEBTOR ONLY AND IS NOT A SOLICITATION BY  
THE ATTORNEYS OR ACCOUNTANTS FOR THE DEBTOR, AND THE REPRESENTATIONS  
MADE HEREIN ARE THOSE OF THE DEBTOR AND NOT OF SUCH ATTORNEYS OR  
ACCOUNTANTS, EXCEPT AS MAY BE OTHERWISE INDICATED.

1 As a claimant or interest holder, your vote is important. The Bankruptcy Court cannot consider  
2 Confirmation of the Plan until acceptance thereof has been obtained pursuant to the affirmative vote of  
3 impaired claimants by classes who hold at least two-thirds (2/3) in amount and more than one-half (1/2)  
4 in number of the allowed claims by class voting on the Plan. If an impaired claimant or interest holder  
5 who is entitled to vote does not, such failure to vote will bear upon the outcome.

6 Whether a creditor or interest holder votes on the Plan or not, or whether the creditor or interest  
7 holder votes at all, such party will be bound by the terms and treatment set forth in the Plan if the Plan  
8 is accepted by the requisite majorities of creditors and interest holders and is confirmed by the  
9 Bankruptcy Court. Allowance of a claim or interest for voting purposes does not necessarily mean that  
10 all or a portion of the claim or interest will be allowed or disallowed for distribution purposes.

11 Following acceptance, the Bankruptcy Court will hold a hearing on the confirmation of the Plan  
12 and will enter an order of confirmation with respect to the Plan if it finds that, among other things, all  
13 payments to be made by the Debtor in connection with the case or Plan have been disclosed to the  
14 Bankruptcy Court, the identity and affiliation of post-confirmation management of the Reorganized  
15 Debtor has been fully disclosed, each class of claimants and interest holders has accepted the Plan or is  
16 not impaired by the provisions thereof, and that confirmation is not likely to be followed by the  
17 liquidation or need for further financial reorganization of the Reorganized Debtor.

18 In the event that the requisite acceptance of impaired classes of claims and interests are not  
19 obtained, pursuant to Section 1129 (b)(1) of the Bankruptcy Code, the Bankruptcy Court may  
20 nevertheless confirm the Plan upon the request of the proponent of the Plan if the Bankruptcy Court  
21 finds that the Plan does not discriminate unfairly and accords fair and equitable treatment to the class  
22 rejecting it.

23 At the hearing on confirmation of the Plan, the Bankruptcy Court will hear any timely filed  
24 objections from a claimant or interest holder to confirmation of the Plan.

25 THE ONLY REPRESENTATIONS THAT ARE AUTHORIZED OR WHICH MAY BE MADE  
26 CONCERNING THE DEBTOR, THE VALUE OF ITS ASSETS, OR THE REORGANIZED DEBTOR  
27 ARE THE REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT. EXCEPT  
28 AS NOTED, THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE

1 STATEMENT HAS NOT BEEN SUBJECTED TO AN AUDIT BY AN INDEPENDENT CERTIFIED  
2 PUBLIC ACCOUNTANT. ALL FINANCIAL RECORDS OF THE DEBTOR ARE MAINTAINED  
3 ON AN ACCRUAL BASIS. ALL EXPENSES AND INCOME ARE ON AN CASH BASIS. SOME  
4 OF THE ACCOUNTING/FINANCIAL WORK FOR THE DEBTOR MAY BE PERFORMED BY AN  
5 ACCOUNTANT OF THE DEBTOR. FOR THAT REASON, THE DEBTOR IS NOT ABLE TO  
6 WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE  
7 STATEMENT IS WITHOUT INACCURACY. HOWEVER, GREAT EFFORT HAS BEEN MADE  
8 TO ENSURE THAT ALL SUCH INFORMATION IS FAIRLY PRESENTED. NO  
9 REPRESENTATIONS OR ASSURANCES CONCERNING THE DEBTOR (INCLUDING, WITHOUT  
10 LIMITATION, ITS FUTURE BUSINESS OPERATIONS) OR THE PLAN ARE AUTHORIZED BY  
11 THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY  
12 REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON TO SECURE YOUR VOTE  
13 WHICH ARE OTHER THAN HEREIN CONTAINED SHOULD NOT BE RELIED UPON BY YOU  
14 IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR  
15 INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WHO, IN TURN,  
16 SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION  
17 AS MAY BE DEEMED APPROPRIATE.

18 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS  
19 OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED HEREIN. NEITHER  
20 DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE  
21 IN CONNECTION WITH THIS DISCLOSURE STATEMENT SHALL, UNDER ANY  
22 CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN  
23 THE FACTS SET FORTH HEREIN SINCE THE DATE THIS DISCLOSURE STATEMENT AND  
24 THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT  
25 WERE COMPILED. THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY  
26 PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING  
27 CONTAINED IN IT SHALL CONSTITUTE, OR BE DEEMED CONCLUSIVE ADVICE ON, THE  
28 TAX OR OTHER LEGAL EFFECTS OF ANY REORGANIZATION ON HOLDERS OF CLAIMS OR

1 INTERESTS IN CONNECTION WITH SUCH REORGANIZATION.

2 THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE  
3 BANKRUPTCY COURT, DATED \_\_\_\_\_, 2013, AS CONTAINING  
4 INFORMATION OF A KIND AND IN SUFFICIENT DETAIL TO ENABLE A REASONABLE,  
5 HYPOTHETICAL INVESTOR TO MAKE AN INFORMED JUDGMENT CONCERNING THE  
6 PLAN. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT,  
7 HOWEVER, DOES NOT CONSTITUTE A RECOMMENDATION BY THE BANKRUPTCY COURT  
8 EITHER FOR OR AGAINST THE PLAN.

9 IN ORDER TO BE CONSIDERED FOR PURPOSES OF SATISFYING THE BANKRUPTCY  
10 CODE REQUIREMENTS, YOUR BALLOT MUST BE RECEIVED AT THE ADDRESS INDICATED  
11 ON THE BALLOT NO LATER THAN 5:00 P.M. ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2013.

12 A BALLOT ACCOMPANIES THIS DISCLOSURE STATEMENT FOR USE IN VOTING OF  
13 THE PLAN.

## 14 ***SECTION II***

### 15 *History of Debtor and Factors Leading to the Filing of the Chapter 11*

#### 16 2.1 Circumstances that Gave Rise to the Filing of the Bankruptcy Petition.

17 Nimbus Brewing Company, LLC ("Nimbus") the largest brewing company in Arizona is a  
18 long-time business that has suffered financial setbacks in recent years due in larger part to the  
19 downturn in the local, regional, and national economy and other business difficulties.

20 2001 marked the arrival of our new state of the art 35 barrel high pressure steam fired brew  
21 house manufactured by JV Northwest. It is the crowning accomplishment in Nimbus Brewing  
22 Company's major brewery expansion that began in June of 2000 with the arrival of James Counts,  
23 Managing Partner of Nimbus Brewing Company. With almost 1,000 barrels of fermenting capacity,  
24 we boast an annual production capacity of 22,500 barrels (about 45,000 kegs) of beer. The Tucson  
25 based Nimbus Brewing Company now owns the distinction of being the largest brewery based in the  
26 state of Arizona. Our three 150 barrel fermenters standing almost 30 feet tall and each holding  
27 almost 5,000 gallons of beer are a sight to behold for any lover of quality micro-brewed beers and are  
28

1 a testament to the demand of our products throughout Arizona and the surrounding region.

2 Scott Schwartz, the head Nimbus brewer monitors all aspects of the brewing process, and has  
3 garnered multiple awards for Nimbus Brewing Company, including best local brew and best beer on  
4 tap in the best of Tucson competition for five consecutive years. In addition, Nimbus was named best  
5 micro brewery by the Arizona Daily Star and the Arizona Republic and was selected four years in a  
6 row to attend the prestigious Oregon Brew Festival each time winning with our exceptional English  
7 strong monkeyshine ale. Our ales have won many individual awards including silver medal for our  
8 oatmeal stout, red, pale and English strong monkeyshine in the world beer cup. Our Belgian white  
9 won best in show at the Las Vegas Brewfest, and a regional bronze medal in the United State Beer  
10 Tasting Championships. At the United State Beer Tasting Championships, Nimbus was also proud to  
11 receive a regional gold medal and silver national medal for its Pale Ale. With awards and accolades  
12 too many to list, we are fortunate to have Scott at the helm of production, as are thousands of people  
13 who enjoy his mastery of the art of brewing on a daily basis.

14 Nimbus is a brewery operation with an associated restaurant/pub with the same name. In the  
15 summer of 2011, at the lowest point of the year for the local restaurant trade, Nimbus' brewing  
16 operations essentially were halted when Southwest Gas installed a faulty gas meter. This caused  
17 problems in operations of the high pressure steam boiler, which powered the brewing operations, as  
18 the boiler was not getting adequate gas supply from the faulty meter. This resulted in debtor being  
19 unable to brew beer to complete existing orders. After may weeks of attempting to work with  
20 Southwest Gas to verify the cause of the problem, it was determined that an incorrect size of gas  
21 meter had been installed. Nimbus Brewing company, LLC was unable to produce product for a total  
22 of nine weeks. This led to the loss of multiple business accounts as the brewery was unable to fill  
23 orders and in a substantially reduced cash flow to debtor.

24 Nimbus spent several months attempting to work with the loss mitigation department of  
25 Southwest Gas to try to recoup some of these losses, some of which were substantial. It took months  
26 for the brewery to begin to get production back up to its previous production levels. Nimbus  
27 attempted to cover these losses from their cash reserves in the bank and to keep the business  
28 operating and keep all employees on staff, but ultimately and prior to a Southwest Gas settlement,

1 Nimbus had exhausted the cash reserved of the business and was forced to seek the assistance of the  
2 courts in reorganizing the obligations of the company.

3 2.2 Current Management: The Debtor is currently managed by James C Counts..

4 2.3 The Anticipated Future of the Debtor: the future looks good for Nimbus, with lowered  
5 overhead due to the restructuring of business debt and being released from various legal obligations,  
6 due to the period of its inability to produce Nimbus products. Confirmation will enable the company  
7 to utilize the improved cash flow in a prudent business manner including expansion into Georgia,  
8 New Mexico and California. This will include setting aside money each month for contingencies  
9 such as repairs and unforeseen events at the brewery.

10 2.4 Causes of Action: The Debtor has a cause of action against New Way Tucson  
11 Restaurant, L.L.C. and DonBrandon, L.L.C. in excess of \$100,000.

12 2.5 New Plan of Reorganization: The Debtor has filed a Plan which will allow it to retain  
13 the property and pay creditors more money than creditors would receive from a liquidation of the  
14 property. See liquidation analysis attached hereto as **Exhibit "C"**.

15 2.6. The Condition and Performance of the Debtor While in Chapter 11: Nimbus is  
16 currently producing income from its operations of the business. The Profits are currently back to pre-  
17 Southwest Gas Incident levels and now projected to grow by 5%-8% annually as new markets are  
18 opened for Nimbus products.

19 2.7 The Accounting and Valuation Methods Used to Produce the Financial Information in  
20 the Disclosure Statement: The accounting process is conducted using generally accepted accounting  
21 principles. Accounting information is furnished by Nimbus and is presented on a cash basis.

22 Inventory and Assets: The post-petition income are assets of the business. Nimbus' assets are listed  
23 in Exhibit A. Management of Nimbus will remain with Debtor's principle James Counts.

24 2.8 The Existence, Likelihood and Possible Success of Non-bankruptcy Litigation:  
25 Debtor has retained the firm of Karp & Weiss but they were not able to reach an agreement over  
26 monies owed to the debtor. Debtor believes it has a cause of action against New Way Tucson  
27 Restaurant, L.L.C. and DonBrandon, L.L.C. which it shall pursue.

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### ***SECTION III***

#### *Income Projections of the Property*

A proforma statement of the **Anticipated Income and Expenses and Schedule of Sources and Uses of Cash** relating to payments to creditors under the plan are attached hereto, as **Exhibit “D”**.

The Debtor has derived this information from the principal of the debtor, James Counts. Mr. Counts is in a personal Chapter 11 due to personal guarantees executed on behalf of the debtor.

### ***SECTION IV***

#### *Summary of Plan of Reorganization*

THE FOLLOWING IS A BRIEF SUMMARY OF CERTAIN PROVISIONS OF THE PLAN AND SHOULD NOT BE RELIED ON FOR VOTING PURPOSES. THE SUMMARY DOES NOT PURPORT TO BE COMPLETE. CREDITORS AND INTEREST HOLDERS ARE URGED TO READ THE PLAN ATTACHED HERETO AS EXHIBIT “A”. CREDITORS AND INTEREST HOLDERS ARE FURTHER URGED TO CONSULT WITH COUNSEL, OR WITH EACH OTHER, IN ORDER TO UNDERSTAND THE PLAN MORE FULLY.

4.1 100% Plan: The Plan contemplates that secured creditors will be paid the full amount of their allowed claims. The infusion of monies into the reorganized Debtor through additional capital contributions may be required. Potential investors of Debtor may also infuse new capital. The infusion of monies into the reorganized Debtor through capital contributions may be required in order for debtor to continue in business. In order for debtor to continue in business, potential investors of the Debtor may also infuse new capital. Any new monies will also be used as operating reserves to cover any operating shortfalls which the Debtor may encounter.

POTENTIAL INVESTORS MAY BE ALLOWED TO ACQUIRE A PERCENTAGE OF INTEREST OR A PERCENTAGE THEREOF, IN THE REORGANIZED DEBTOR.

These proceeds, in conjunction with the Property’s revenues and inherent future appreciation, will provide the necessary funds to Debtor to pay creditors under the Plan.

4.2 Segregation of Classes: The Plan further proposes to segregate the creditors and interest

1 holders of the Debtor into separate classes. Of these classes, allowed administrative and priority  
2 claimants including priority tax claimants, but exclusive of those referenced in 11 U.S.C.

3 Section 507(a)(8) will receive payments of 100% of their respective claims, in cash over time, with  
4 a market rate of interest, as set forth in the Plan.

5 The Debtor may propose to separately classify some unsecured creditors from deficiency  
6 claims of other creditors.

7 Generally, all Administrative Claims will be paid in full in cash as stated in the Plan. The  
8 Debtor shall retain the property and the creditors shall be paid in accordance with modifications of  
9 their applicable loan and security documents as set forth herein and in the Plan of Reorganization.

10 4.3 Value of Secured Claims: Under the Plan, the Debtor proposes to allow the secured  
11 creditors to retain their liens in the amount equal to the lesser of the value of the property or the full  
12 amount of their claim on the Petition Date.

13 ANY STIPULATION ENTERED INTO BETWEEN THE SECURED CREDITORS AND  
14 THE DEBTOR SHALL SUPERSEDE ANY TREATMENT OF CREDITORS THAT MAY BE  
15 SET FORTH IN THE DEBTOR'S PLAN.

16 All other previously secured creditors on the Debtor's real properties, if any, unless a  
17 stipulation is reached, will have their respective liens which encumber the property removed and  
18 their claims treated as deficiency claims, paid as set forth in the Plan.

19 4.4 Cash Collateral Litigation: There is no cash collateral litigation.

20 4.5 Description of Assets - Values: The major asset of the debtor is the goodwill, customers  
21 and brewery located at 3850 E. 44<sup>th</sup> Street, Tucson, AZ 85713. Debtor does sell "Nimbus"  
22 memorabilia as shown on Exhibit "C" attached hereto.

23 4.6 Anticipated Future of Debtor: Debtor believes business will continue to grow as debtor  
24 enters new markets.

25 4.7 Source of Information: The source of the information presented is James Counts, manager  
26 of the Debtor.

27 4.8 Condition and Performance of the Debtor in Chapter 11: Debtor maintains the assets  
28 necessary to continue to operate.



4.9 Information Regarding Claims Against Estate: Debtor has claims against New Way Tucson Restaurant, L.L.C. and DonBrandon, L.L.C. in excess of \$100,000.00

4.10 Liquidation Analysis: A liquidation analysis valuing assets of the debtor in a Chapter 7 is attached as **Exhibit “C”**. This liquidation analysis will include any uncollected account receivables.

4.11 Future Management of the Debtor: The Debtor will be managed by James Counts, post-confirmation.

4.12 Non-Bankruptcy Litigation: Debtor anticipates some bankruptcy litigation will occur after confirmation of the Plan of Reorganization to allow debtor to collect monies owed to it and to utilize those funds to pay creditors and operate.

4.13 Avoidable Transfers: Debtor is unaware of any transfers of property of this estate which would allow an avoidable transfer action.

4.14 Accounts Receivable: Debtor collects accounts receivable on a regular ordinary course of business..

4.15 Presence of Affiliates: There are no affiliates.

4.16 New Capital Contribution: Debtor does not believe a new capital contribution is required as allowed claims are being paid in full.

## SECTION V

### *Classification and Treatment of Claims and Interests*

1. *Claim Amounts:* Because certain claims against the Debtor may be unknown or of undetermined amounts, the amounts of claims specified in this Disclosure Statement reflect only the Debtor's best estimate at this time of the amount due. In addition, the amounts of the claims specified in this Disclosure Statement do not include, for example, claims arising from the rejection of certain executory contracts and other contingent or unliquidated claims arising against the debtor.

2. *Effective Date of the Plan:* The “Effective Date” of the Plan is important in determining when performance of many of the Debtor’s obligations under the Plan is due. The Effective Date is defined in the Plan as the first business day following the later of the following day;

1 (i) the date on which the Order confirming the Plan (the “Confirmation Order”)  
2 becomes final and non-appealable with no appeal then pending; or

3 (ii) 60 days after the date of the Confirmation Order for unsecured claims; and

4 (iii) 30 days after the date of the Confirmation Order for secured claims.

5 3. *Classification:* The Plan divides claims against the Debtor into multiple separate  
6 classes that the Debtor asserts are in accordance with the Bankruptcy Code. Unless otherwise  
7 expressly stated in the Plan, distributions to holders of allowed claims are in full satisfaction of their  
8 allowed claims. All claims against the Debtor arising prior to confirmation will be discharged by  
9 performance of the Plan on the Effective Date to the extent that such claims are dischargeable under  
10 the Bankruptcy Code Section 1141(d). For the purposes of the Plan, claims are classified and treated  
11 as follows:

12 5.1 Class One - Administrative Claims.

13 A. Classification: Class One consists of all claims for the cost of administration  
14 of the Debtor’s bankruptcy estate. Included in this class are all claims for administrative expenses  
15 entitled to priority under Bankruptcy Code §507(A)(1), such as professional fees and costs, as  
16 approved by the Bankruptcy Court of the attorneys, accountants, and other professional persons  
17 employed by the Debtor, and all actual and necessary expenses of operating the Debtor’s business  
18 pursuant to Bankruptcy Code §503(b), including without limitation, all fees charged against the  
19 Debtor’s business pursuant to Chapter 123 of Title 28, United States Code. Debtor believes claims in  
20 this class may exceed \$25,000.00.

21 B. Impairment: Not impaired.

22 C. Treatment: The Plan provides for the payment in cash, in full, of all allowed  
23 Administrative Claims on the later of the Effective Date or the date upon which such Claims become  
24 Allowed Claims, or as otherwise ordered by the Bankruptcy Court. Class 1 claims will be paid from  
25 assets of the estate. The Debtor currently estimates that the Class 1 claims will total approximately  
26 \$25,000.00 and may include post-petition administrative expenses. Such payments will reduce the  
27 amount of administrative expenses due on the Effective Date of the Plan unless otherwise provided  
28 for.

1                   5.2     Class Two - Claims of Governmental Units

2                   A.     Classification: Class Two claims consists of all allowed claims of the United  
3 States Internal Revenue Service (“IRS”) and/or State of Arizona, Department of Revenue (“DOR”)  
4 and/or the Department of Economic Security (“DES”), City of Tucson or other government agency  
5 which are entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code except ad  
6 valorem taxes. Debtors are aware of Proofs of Claim filed by Arizona Department of Revenue in  
7 the amount of \$37,116.20.

8                   B.     Impairment: Class Two is impaired.

9                   C.     Treatment: Each holder of a Class Two allowed claim shall retain its lien or  
10 claim, in accordance with Section 1129 of the Bankruptcy Code. The claim shall bear simple  
11 interest at a fixed rate equal to that rate which would be required to be paid as of the Effective Date  
12 under Section 6621 and/or 6622 of the Internal Revenue Code, or such other interest rate as the  
13 Bankruptcy Court determines is sufficient to confer upon the tax claim a value as of the Effective  
14 Date equal to the principal amount of such claim. The allowed claim shall be payable in 60 equal  
15 monthly installments of principal, along with accrued interest, in deferred cash payments over a  
16 period not to exceed five years from date of petition. The first payment shall commence on the first  
17 day of the month immediately following the month of the Effective Date. The claim is subject to  
18 prepayment at any time without penalty or premium and shall have such other terms as are usual and  
19 customary.

20                5.3     Class Three - Secured Ad Valorem Real Property Tax Claims

21                   A.     Classification: Class Three shall consist of pre-petition allowed Ad Valorem  
22 Real Property Tax Claims of Pima County, AZ which are secured by liens on real property. The  
23 Debtor is unaware of any claims in this class.

24                   B.     Impairment: Class Three is impaired.

25                   C.     Treatment: Each holder of a Class Three allowed claim shall retain its lien  
26 having an aggregate principal amount sufficient to satisfy, in accordance with Section 1129 of the  
27 Bankruptcy Code, the allowed claim. Such claim shall bear simple interest at a statutory rate  
28 required to be paid as of the Effective Date, or such other interest rate as the Bankruptcy Court

1 determines is sufficient to confer upon the tax claim a value as of the Effective Date equal to the  
2 principal amount of such claim charged by Pima County or the statutory rate of interest. Payments  
3 shall be made in equal monthly installments of principal, along with accrued interest, in deferred  
4 cash payments over a period not to exceed five years from date of petition. The claim is subject to  
5 prepayment at any time without penalty or premium and shall have such other terms as are usual and  
6 customary for promissory notes.

7 5.4 Class 4 - Secured Statutory Claims of Pima County

8 A. Classification: Class Four shall consist of pre-petition allowed Secured Tax  
9 Claims of Pima County for personal property taxes. The Debtors estimate claims in this class in the  
10 approximate amount of \$8,427.60 for tax years 2011 and 2012.

11 B. Impairment: Class Four is impaired.

12 C. Treatment: The holder of a Class Four allowed claim shall retain its lien  
13 having an aggregate principal amount sufficient to satisfy, in accordance with Section 1129 of the  
14 Bankruptcy Code, the allowed claim. Such claim shall bear simple interest at a statutory rate of 16%  
15 per annum required to be paid as of the Effective Date, or such other interest rate as the Bankruptcy  
16 Court determines is sufficient to confer upon the tax claim a value as of the Effective Date equal to  
17 the principal amount of such claim charged by Pima County or the statutory rate of interest.  
18 Payments shall be made in equal monthly installments of principal, along with accrued interest, in  
19 deferred cash payments over a period not to exceed five years from date of petition, with the first  
20 payment commencing on the first day of the month immediately following the month of the Effective  
21 Date. The claim is subject to prepayment at any time without penalty or premium and shall have  
22 such other terms as are required by law.

23 5.5 Class Five - Secured Claim of Rewards Network Establishment ("Rewards").

24 A. Classification: This claim consists of the allowed secured claim of Rewards to  
25 the extent of the value of the secured creditor's interest in the Debtor's interest in all inventory,  
26 accounts, chattel paper, equipment and general intangibles, all accessions, additions, replacements,  
27 and substitutions relating to any of the foregoing, all records of any kind relating to any of the  
28 foregoing and all proceeds relating to any of the foregoing (including insurance, general intangibles

1 and other accounts proceeds). This claim is evidenced by a promissory note and security agreement.  
2 The Debtor is aware of a proof of claim in this class in the amount of \$49,405.74. Debtor believes  
3 the claim is not fully secured.

4 B. Impairment: Class Five is impaired.

5 C. Treatment: The Class Five allowed secured claim of Rewards shall continue to  
6 be paid according to the contract entered into by the parties.

7 5.6 Class Six Secured Claim of BMT Leasing Inc. ("BMT")

8 A. Classification: This claim consists of the allowed secured claim of BMT to the  
9 extent of the value of the secured creditor's interest in the Debtor's interest in the equipment finance  
10 agreement. This claim is evidenced by an equipment finance agreement and UCC-1 filings. The  
11 Debtor is aware of a proof of claim in this class in the amount of \$2,400.22.

12 B. Impairment: Class Six is impaired.

13 C. Treatment: The Class Six allowed secured claim of BMT shall be paid in  
14 equal monthly installments over sixty months at five (5%) percent interest per annum.

15 5.7 Class Seven - Secured Claim of Nationwide Funding, LLC ("Nationwide").

16 A. Classification: This claim consists of the allowed secured claim of Nationwide  
17 to the extent of the value of the secured creditor's interest in the Debtor's interest in leased  
18 equipment under lease agreements 10-009724. This claim is evidenced by a lease agreement . Debtor  
19 estimates the claim in this class in the amount of \$16,944.64. Debtor believes the claim is not fully  
20 secured.

21 B. Impairment: Class Seven is impaired.

22 C. Treatment: The Class Seven allowed secured claim of Nationwide shall be  
23 \$9,694.64 paid in equal monthly installments over sixty months at five (5%) percent interest per  
24 annum as a total payoff on the lease.

25 5.8 Class Eight - Secured Claim of US Bancorp ("US Bancorp").

26 A. Classification: This claim consists of the allowed secured claim of US  
27 Bancorp to the extent of the value of the secured creditor's interest in the Debtor's interest in  
28 equipment under UCC-1 filings. This claim is evidenced by UCC-1 filings. Debtor estimates the

1 claim in this class in the amount of unknown.

2 B. Impairment: Class Eight is impaired.

3 C. Treatment: Debtor believes that the claim of US Bancorp has been satisfied  
4 and no monies are owed to Us Bancorp. If US Bancorp is found to have a claim it shall be treated  
5 and paid according to the contract entered into by the parties.

6 5.9 Class Nine - Secured Claim of AEL Financial LLC (“ AEL”).

7 A. Classification: This claim consists of the allowed secured claim of AEL to the  
8 extent of the value of the secured creditor’s interest in the Debtor’s interest in equipment under  
9 UCC-1 filings. This claim is evidenced by UCC-1 filings. Debtor estimates the claim in this class in  
10 the amount of unknown.

11 B. Impairment: Class Nine is impaired.

12 C. Treatment: Debtor believes that the claim of AEL has been satisfied and no  
13 monies are owed to AEL. If AEL is found to have a claim it shall be treated and paid according to  
14 the contract entered into by the parties.

15 5.10 Class Ten - Secured Claim of Corp Service Company (“ Corp Service”).

16 A. Classification: This claim consists of the allowed secured claim of Corp  
17 Service to the extent of the value of the secured creditor’s interest in the Debtor’s interest in  
18 equipment under UCC-1 filings. This claim is evidenced by UCC-1 filings. Debtor estimates the  
19 claim in this class in the amount of unknown.

20 B. Impairment: Class Ten is impaired.

21 C. Treatment: Debtor believes that the claim of Corp Service has been satisfied  
22 and no monies are owed to Corp Service. If Corp Service is found to have a claim it shall be treated  
23 and paid according to the contract entered into by the parties.

24 5.11 Class Eleven - Secured Claim of National City Commercial Cap (“ National City”).

25 A. Classification: This claim consists of the allowed secured claim of National  
26 City to the extent of the value of the secured creditor’s interest in the Debtor’s interest in equipment  
27 under UCC-1 filings. This claim is evidenced by UCC-1 filings. Debtor estimates the claim in this  
28 class in the amount of unknown.

1 B. Impairment: Class Eleven is impaired.

2 C. Treatment: Debtor believes that the claim of National City has been satisfied  
3 and no monies are owed to National City. If National City is found to have a claim it shall be treated  
4 and paid according to the contract entered into by the parties.

5 5.12 Class Twelve - Unsecured Deficiency Claims and Unsecured Claims.

6 A. Classification: Class Twelve consists of all unsecured deficiency claims and  
7 unsecured claims against the debtor. Debtor estimates claims in this class may exceed \$105,000.00.

8 B. Impairment: Class Twelve is impaired.

9 C. Treatment: The Class Twelve claims shall be paid an amount equal to fifty  
10 percent (50 %) of the allowed amount of their claims at three percent (3 %) interest on the unpaid  
11 balance in one hundred and twenty (120) equal monthly installments with the first payment due 60  
12 days from the Effective Date. Any liens held by the Class Twelve creditors shall be null and void and  
13 removed as of the Effective Date.

14 5.13 Class Thirteen- Contingent, Unliquidated and Disputed Claims.

15 A. Classification: Class Thirteen consists of all contingent, unliquidated and  
16 disputed claims.

17 B. Impairment: Class Thirteen is impaired.

18 C. Treatment: Class Thirteen creditors shall receive no distribution under the  
19 Plan.

20 5.14 Class Fourteen - Claims of Participating Investors.

21 A. Classification: Class Fourteen consists of the claims of participating  
22 investors.

23 B. Impairment: Class Fourteen is impaired.

24 C. Treatment: Unless participating investors contribute substantial capital  
25 required to fund this Plan and/or make capital improvements to the subject property they will receive  
26 no percentage of the equity interest of the debtor and no distribution under the Plan.

27 5.15 Class Fifteen - Interest of Equity Holders.

28 A. Classification: Class Fifteen consists of the interest of the debtor.

1 B. Impairment: Class Fifteen is not impaired.

2 C. Treatment: The debtor shall be allowed to retain its current percentage of  
3 interest or a percentage thereof unless participating investors are required to contribute substantial  
4 capital required to fund this Plan and/or make capital improvements to the subject property.

## 5 ***SECTION VI***

### 6 *Post-Confirmation Management*

7 The managing member of the Debtor post-confirmation will be James Counts.

## 8 ***SECTION VII***

### 9 *Income Tax Consequences of Reorganization*

10 The Debtor has been advised by Eric Slocum Sparks, Esq. to obtain independent tax advice  
11 to determine the consequences of going forward under the Plan and retaining the Property hereunder.  
12 The Debtor has advised Eric Slocum Sparks, Esq. that outside tax counsel has been/or will be  
13 retained and/or consulted to assist in drafting, amending or revising the Plan as proposed. The  
14 debtor and Eric Slocum Sparks, P.C. have been advised that the debtor can retain the property  
15 without significant adverse tax consequences.

16 7.1 Disclaimer: *The income tax consequences of the reorganization of the Debtor*  
17 *pursuant to this Plan will be different and will depend upon the Debtor's tax situation. Eric Slocum*  
18 *Sparks, P.C. is not advising the Debtor regarding the tax consequences of the reorganization of the*  
19 *Debtor and the Debtor will consult with its own tax advisor regarding the tax consequences of the*  
20 *reorganization of the Debtor according to the Plan.*

21 *ANY POTENTIAL PARTICIPATING INVESTORS ARE URGED TO CONSULT THEIR*  
22 *OWN ADVISORS AS TO THE OVERALL TAX IMPLICATIONS OF PARTICIPATION OR NON-*  
23 *PARTICIPATION UNDER THE PLAN.*

24 7.2 Consummation: For purposes of Local Bankruptcy Rule 2015, and consistent with  
25 Bankruptcy Code Section 1001(2), consummation of the Plan shall occur upon the ① funding of the  
26 contributions due from participating investors hereunder if required ; and ② commencement of  
27 disbursements to Impaired creditors as provided in the Plan.



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## **SECTION IX**

### *Liquidation Analysis*

The primary assets and only significant income-producing asset of the Debtor's estate is the commercial property located in Tucson, Arizona. The property is subject to and encumbered by the asserted liens and security interests held by the major secured creditors of the property.

In the event this case were converted to a case under Chapter 7 and the assets of the estate liquidated, these creditors would proceed to foreclose upon their interest in the property. A foreclosure of the property would eliminate any prospect of any payment to remaining unsecured and priority creditors. As a result, it is the debtor's opinion that all claimants are best served through implementation and effectuation of the Plan which provides for a significant , albeit limited, dividend on its claims. If the Plan of Reorganization is consummated, the Unsecured trade creditors and unsecured deficiency claims will be paid a substantial sum of monies, on a pro rata basis as set forth in the Plan. Creditors and other interested parties are urged to review the debtor's schedules and statement of affairs as filed with the United States Bankruptcy Clerk's Office (and as amended from time to time) for purposes of confirming the debtor's conclusions contained in this liquidations analysis, attached hereto as **Exhibit "C"**.

## **SECTION X**

### *Acceptance and Confirmation*

10.1 What is Necessary for Court Approval of a Plan: Chapter 11 of the Bankruptcy Code permits the readjustment of secured debt, unsecured debt and equity interests. A Chapter 11 plan may provide less than full satisfaction of senior indebtedness and payment of junior indebtedness, and may even provide some return to equity owners absent full satisfaction of indebtedness, so long as no impaired class votes against the plan (except as provided below).

Even if an impaired class votes against the plan, implementation of the plan is still possible so long as the plan is fair and equitable and that class is afforded certain treatment defined by the Code. That certain treatment may be very broadly defined as giving a claimant the full value of his claim or interest. Such value is determined by the Court and balanced against the treatment afforded the dissenting class of creditors. If the latter is equal to or greater than the former, the Plan may be

1 confirmed over the dissent of that class, depending upon the treatment of junior claims and interests.  
2 In particular, senior claims must be satisfied in full prior to payment of junior claims or interests,  
3 unless the holders of senior claims agree to different treatment. This principle, commonly known as  
4 the "absolute priority rule", applies only in cases when a class of unsecured claims or equity interests  
5 is impaired and does not accept the plan. In that event, the absolute priority rule does not apply to all  
6 classes of unsecured claims and equity interests, but only to the dissenting class and classes junior to  
7 the dissenting class.

8 The exception to the absolute priority rule is that an existing Debtor can contribute money or  
9 property which is (1) new (fresh); (2) substantial; (3) necessary, and (4) not readily available from  
10 other sources.

11 In the event a class is unimpaired, it is automatically deemed to have accepted the plan. In  
12 this proposed Plan, Classes 2 through 14 will be impaired, as defined in §1124 of the Code, as the  
13 result of the Plan. All other classes will be unimpaired.

14 The Code states that if there is no dissenting class, the test for approval by the Court of a  
15 Chapter 11 plan (i.e., confirmation) is whether the plan is feasible and in the best interests of  
16 creditors and interest holders. In simple terms, a plan is in the best interests of creditors and interest  
17 holders if the plan will provide a better recovery to the creditors and interest holders than they would  
18 obtain if the Debtor were liquidated and the proceeds distributed in accordance with bankruptcy  
19 liquidation priorities. The Court, in considering this factor, need not consider any other alternative to  
20 the plan but liquidation.

21 In considering "feasibility", as mentioned earlier, the Bankruptcy Court is only required to  
22 determine whether the plan has a reasonable prospect of being accomplished. This entails  
23 determining the availability of cash for payments required at the effective date, and any other factor  
24 which might make it impossible for the reorganized Debtor to accomplish that which it proposes to  
25 accomplish in he plan.

26 In addition, in order to confirm a plan, the Court must find that the plan was proposed in  
27 good faith and that the plan and the Debtor are in compliance with the applicable provisions of  
28 Chapter 11. Finally, similar to the requirement that the Court find the plan to be feasible, the Court

1 must find that liquidation or further reorganization of the reorganized Debtor is not likely to occur  
2 after implementation of the plan.

3 The determination by the Court that a plan is fair, equitable and feasible occurs at the  
4 confirmation hearing after a plan has been accepted. The Court's judgment on these matter does not  
5 constitute an expression of the Court's opinion as to whether the plan is a good one, nor does it  
6 constitute an opinion by the Court regarding any debt or equity interest or securities issued to  
7 creditors under the plan.

8 10.2 Alternatives to the Plan: Although this Disclosure Statement is intended to provide  
9 information to assist in the formation of a judgment as to whether to vote for or against this proposed  
10 Plan, and although creditors are not being offered through that vote an opportunity to express an  
11 opinion concerning alternatives to the Plan, a brief reminder of the alternative to the Plan is in order.  
12 This alternative includes the probable liquidation of the Debtor through conversion of the case to one  
13 under Chapter 7. The Debtor believes the Plan to be in the best interests of the creditors and the  
14 interest holders. In arriving at this conclusion, the Debtor emphasizes that the debtor has liabilities  
15 in excess of the fair market value of its assets (refer to debtor's schedules). Moreover, the principal  
16 assets of the debtor are fully encumbered and the debts which are secured by the debtor's assets  
17 exceed the value of those assets. Consequently, the unsecured creditors of the debtor would likely  
18 receive smaller distributions under a Chapter 7 liquidation. THE DEBTOR HAS ATTEMPTED TO  
19 SET FORTH THE LIKELY LIQUIDATION ALTERNATIVE TO ITS PROPOSED PLAN. THE  
20 DEBTOR MUST CAUTION CREDITORS HOWEVER, THAT A VOTE MUST BE FOR OR  
21 AGAINST THE PLAN. THE VOTE ON THE PLAN DOES NOT INCLUDE A VOTE ON THE  
22 LIKELY LIQUIDATION ALTERNATIVE TO THE PLAN. THERE IS NO ASSURANCE THAT  
23 THE LIKELY LIQUIDATION ALTERNATIVE WILL, IN FACT, FOLLOW IF THE PLAN FAILS  
24 ACCEPTANCE. IF YOU BELIEVE THE LIQUIDATION ALTERNATIVE IS PREFERABLE TO  
25 THE PLAN AND YOU WISH TO URGE IT UPON THE COURT, YOU SHOULD CONSULT  
26 COUNSEL.

27 10.3 Specific Consideration in Voting: All of the foregoing gives rise to the following  
28 implications and risks concerning the Plan.

1 While the Plan provides for certain payments, such payments will apply only to allowed  
2 claims and certain interests. Under the Bankruptcy Code, a claim may not be paid until it is  
3 "allowed". A claim will be allowed in the absence of an objection. A claim to which an objection  
4 has been filed will be heard by the Court at a regular evidentiary hearing and will be allowed in full,  
5 in part, or disallowed. While the Debtor will bear the principal responsibility for claim objections,  
6 any interested party may file claim objections. Accordingly, payment on all claims may be delayed  
7 until objections to such claims are ultimately settled.

8 10.4 Risk Factors. For classes of claims which do not receive cash on the Effective Date,  
9 there are certain risks inherent in accepting the Plan, including the absence of absolute certainty of  
10 ultimate payment.

11 10.5 Disclosure Required by the Code: The Code requires disclosure of certain facts as  
12 follows:

- 13 1) there are no payments or promises made of the kind specified in Section  
14 1129(a)(4)(A) of the Code which have not previously been disclosed to the Court;
- 15 2) the ownership of the Reorganized Debtor will not be affected by the Plan.

## 16 ***SECTION XI***

### 17 *Other Provisions of the Plan*

18  
19 11.1 Retention of Jurisdiction: The Bankruptcy Court shall retain exclusive jurisdiction  
20 over this case to supervise the Plan, to hear, if applicable law provides, and to determine, among  
21 other things, the following matters:

- 22 1) any and all objections to the allowance of claims or interests except as  
23 provided in the Plan;
- 24 2) any and all applications for payment for fees from the Debtor made by  
25 attorneys and other professional pursuant to Sections 330 or 503 of the Bankruptcy Code, or for  
26 payment of any other fees or expenses authorized to be paid by the Debtor under Section 327 of the  
27 Bankruptcy Code, and any objections thereto;
- 28 3) any and all pending applications for rejection, the assumption, or assignment

1 as the case may be of unexpired leases and executory contracts;

2 4) any and all motions, applications, adversary proceedings and contested or  
3 litigated matters properly before the Bankruptcy Court;

4 5) modifications of this Plan;

5 6) all matters relating to the implementation or consummation of this Plan;

6 7) any and all suits or actions brought for collection or recoupment of debts or  
7 other obligations owed by defaulted partners to the Debtor.

8 11.2 Retention of Causes of Action: The Debtor shall retain all claims or causes of action  
9 which it has as of the Confirmation Date, the powers of the debtor-in-possession for purposes of  
10 prosecuting claims and causes of action arising under the Bankruptcy Code, and full authority to  
11 pursue, compromise, and resolve all such claims and causes of action unless the Court has granted  
12 any such right to a creditor of this estate.

13 11.3 Retention or Rejection of Executory Contracts and Leases: The Plan provides that  
14 pursuant to Section 365 of the Bankruptcy Code, the Debtor assumes all executory contracts and  
15 unexpired leases to which they are a party, including leases specifically provided prior to the hearing  
16 on the Disclosure Statement, if any.

17 11.4 Amendments to Plan: The Plan may be altered, amended, or modified by the  
18 proponents before the Confirmation Date, in the manner provided for by Section 1127 of the  
19 Bankruptcy Code or otherwise provided for by law. The Plan may also be altered, amended, or  
20 modified by the proponents after the Effective Date in accordance with the Bankruptcy Code and  
21 applicable law. A holder of a claim or interest that has accepted or rejected the Plan shall be deemed  
22 to have accepted or rejected as the case may be the Plan as modified unless the modification  
23 detrimentally effects the holder of such claim or interest without the prior consent thereof.

24 11.5 Offer, Issuance and Resale of Plan Securities: The offer and issuance of Plan  
25 Securities by any Debtor which constitutes securities under the Securities Act of 1933, as amended  
26 (the "1933 Act") or applicable state securities laws have not been registered under the 1933 Act or  
27 such state securities laws, pursuant to the exemption therefrom provided by Section 1145 of the  
28 Bankruptcy Code.

1 The Plan Securities will bear the following legend:

2 "The offer and sale of this Plan Security has not been registered under  
3 the Securities Act of 1933, as amended, or qualified under applicable  
4 state securities laws, and this Plan Security may not be offered, sold or  
therefrom under such laws."

5 Resale or other transfer of a Plan Security by a creditor who has acquired it pursuant to the  
6 Plan, may or may not be exempt from the registration requirements of Section 5 of the Securities Act  
7 of 1933 and any applicable state securities laws or Blue Sky Laws.

8 BY ITS RECEIPT OF A PLAN SECURITY, EACH RECIPIENT SHALL BE DEEMED TO  
9 ACKNOWLEDGE THAT IT IS RESPONSIBLE FOR ITS COMPLIANCE WITH ALL  
10 APPLICABLE SECURITIES LAWS. EACH CREDITOR SHOULD CONSULT HIS OR HER  
11 OWN ATTORNEY AS TO WHETHER ANY RESALE OF A PLAN SECURITY REQUIRES  
12 REGISTRATION OF SUCH SECURITY UNDER THE SECURITIES ACT OF 1933 OR AN  
13 APPLICABLE STATE SECURITIES LAW.

14 11.6 Provision for Filing Reports and Payments of Fees to the Office of the United States  
15 Trustee: The Debtor shall timely file all quarterly reports and post-confirmation reports and shall pay  
16 all fees to the United States Trustee as required by law and will incorporate such language into the  
17 order confirming the Debtor's Plan of Reorganization.

## 18 ***SECTION XII***

### 19 *Recommendation of Debtor*

20 The Debtor recommends that the Plan of Reorganization be approved in light of the  
21 alternative that only one secured creditor is likely to be paid a significant portion of their claim. The  
22 Debtor is of the opinion that the Plan approval is in the best interest of all creditors.

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## *CONCLUSION*

The materials provided in this Disclosure Statement are intended to assist you in voting on the Plan in an informed fashion. If the Plan is confirmed, you will be bound by its terms. Therefore, you are urged to review this material in order to make an informed vote on the Plan.

DATED: December 18, 2012

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